

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BRUCE KEITHLY and DONOVAN LEE,  
Individually and on Behalf of all Others  
Similarly Situated,

Interim Lead Plaintiffs,

v.

INTELIUS, INC., A Delaware Corporation; and  
INTELIUS SALES, LLC, A Nevada Limited  
Liability Company,

Defendants

v.

ADAPTIVE MARKETING, LLC, a Delaware  
Limited Liability Company,

Third Party Defendant.

No. C09-1485RSL

**DECLARATION OF KARIN B.  
SWOPE IN SUPPORT OF  
PLAINTIFFS' MOTION FOR CLASS  
CERTIFICATION**

Pursuant to 28 U.S.C. § 1746, I, Karin B. Swope, declare as follows:

1. I am an attorney at Keller Rohrbach L.L.P., and am one of the Interim Lead Co-Counsel in this case. I make this Declaration based on personal knowledge and am competent to testify to the matters set forth herein.

2. Attached hereto as Exhibit 1 is the April 22, 2011 Expert Report of Dr. Michael A. Kamins with Exhibits 1-3 attached thereto.

1           3.       Attached hereto as Exhibit 2 is a true and correct copy of the Consent Decree in  
2 *State of Washington v. Intelius*, No. 10-28955, (Wash. Super. Ct. King County, Aug. 10, 2010).

3           4.       Attached hereto as Exhibit 3 are true and correct copies of non-confidential  
4 excerpts from the deposition of Bruce Allen Keithly, taken January 14, 2011.

5           5.       Attached hereto as Exhibit 4 are true and correct copies of non-confidential  
6 excerpts from the deposition of Donovan Lee, taken January 24, 2011.

7           6.       Attached hereto as Exhibit 5 are true and correct copies of Intelius's Offer Codes  
8 (INTELIUS-K 000928-1042).

9           7.       Attached hereto as Exhibit 6 is a true and correct copy of the Intelius Consumer  
10 Site Terms and Conditions which Plaintiffs' counsel caused to be printed out from the Internet  
11 on June 28, 2010.

12           8.       Attached hereto as Exhibit 7 is a true and correct copy of the Intelius Consumer  
13 Site Terms and Conditions which Plaintiffs' counsel caused to be printed out from the Internet  
14 on August 19, 2009.

15           9.       Attached hereto as Exhibit 8 is a true and correct copy of the Intelius Privacy  
16 Policy Effective May 01, 2006 which Plaintiffs' counsel caused to be printed out from the  
17 Internet on August 19, 2009.

18           10.      Attached hereto as Exhibit 9 is a true and correct copy of the Intelius.com Terms  
19 and Conditions (Privacy Policy) Effective December 2009 which Plaintiffs' counsel caused to be  
20 printed out from the Internet on January 31, 2011.

21           11.      Attached hereto as Exhibit 10 is a true and correct copy of the Amended Order  
22 Granting Plaintiff's Motion for Class Certification Pursuant to CR 23(b)(2) in *Jerry Cooper,*  
23 *Inc v. Sunset Chevrolet, Inc.*, No. 04-2-12577-4 SEA (Wash. Super. Ct. King County Sept. 24  
24 2004).

25           12.      Attached hereto as Exhibit 11 is a true and correct copy of the Findings of Fact  
26 and Conclusions of Law and Order Granting Plaintiff's Motion for Class Certification Pursuant to

1 CR 23(b)(2) in *Baron v. Merch. Serv. of Seattle Inc.*, No. 05-2-04738-1SEA (Wash. Super. Ct.  
2 King Apr. 4, 2006).

3 13. Attached hereto as Exhibit 12 is a true and correct copy of the Order Certifying  
4 Class Action Pursuant To CR 23(b)(2) in *Maguire v. GMAC Mortgage Corp.*, No. 03-2-32393-4  
5 SEA (Wash. Super. Ct. King County Mar. 25, 2004).

6 14. Attached hereto as Exhibit 13 is a true and correct copy of a confidential July 11,  
7 2008 email (INTELIUS\_K\_E023712-3) produced by Intelius.

8 15. Attached hereto as Exhibit 14 are true and correct copies of *Kelley v. Microsoft*,  
9 No. 09-35699, 2010 WL 3556196 (9th Cir. Sept. 14, 2010) and the Order Denying Class  
10 Certification in *Kelley v. Microsoft*, No. 07-475, (W.D. Wash. May 24, 2011).

11 16. Attached hereto as Exhibit 15 are true and correct copies of excerpts from a  
12 confidential deposition (INTELIUS-K 009021, 009040-1) taken in *State of Washington v.*  
13 *Intelius Inc.*

14 17. Attached hereto as Exhibit 16 is a true and correct copy of the Complaint for  
15 Injunctive and Other Relief Under the Consumer Protection Act, RCW 19.86 in *State of*  
16 *Washington v. Intelius*, No. 10-28955, (Wash. Super. Ct. King County, July 23, 2010).

17 18. Attached hereto as Exhibit 17 is a true and correct copy of the Reply in Support of  
18 Intelius, Inc.'s Motion for Transfer of Actions Pursuant to 28 U.S.C. § 1407 in *In re Intelius,*  
19 *Inc., Post-transaction Mktg. and Sales Practices Litig.*, No. 2140, (J.P.M.L. Jan. 20, 2010) with  
20 the Order Denying Transfer in *In re Intelius, Inc., Post-transaction Mktg. and Sales Practices*  
21 *Litig.*, No. 2140, (J.P.M.L. Apr. 14, 2010) attached thereto.

22 19. Attached hereto as Exhibit 18 is a true and correct copy of the Declaration of  
23 Ronald V. Thunen III in Support of Defendants' Rule 12(c) Motion for Judgment on the Pleading  
24 to Dismiss Plaintiffs' Consolidated Class Action Complaint in *Keithly et al. v. Intelius et al.*, 09-  
25 1485 (W.D. Wash. Aug. 16 2010) with Exhibits A-D attached thereto.

20. The damages figure is calculated by adding the total amount of revenue from Identity Protect minus refunds and chargebacks, as provided by Intelius in discovery, and subtracting the total amount of revenue derived from customers who enabled the member-enabled services on the Intelius website (6.43%). Since Adaptive has not produced any material discovery to date, for revenue derived from the Adaptive and Intelius post-transactional marketing agreement, Plaintiffs added the total commission Adaptive paid Intelius and the total share of the revenue customers paid to Adaptive using estimation models based on information provided by Intelius. Plaintiffs then subtracted the estimated amount of revenue derived from customers who did not use or activate their benefits for the Adaptive services. The total IDP and total Adaptive post-transactional revenue, minus refunds, chargebacks, and amounts derived from user-enabled benefits, is \$162,406,171. Plaintiffs will provide damages with more precision once they receive discovery from Adaptive, who has records of exact charges to customers through the Intelius website, and the number of customers who did not use or activate the benefits or services that Adaptive offered. Plaintiffs expect this discovery when Adaptive complies with the court's order on Plaintiffs' Motion to Compel.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

DATED this 2nd day of June, 2011 at Seattle, Washington.

By s/ Karin B. Swope  
Karin B. Swope, WSBA #24015

**CERTIFICATE OF SERVICE**

I hereby certify that on June 2, 2011, I caused to be served a true and correct copy of the

**DECLARATION OF KARIN B. SWOPE IN SUPPORT OF PLAINTIFFS' MOTION**

**FOR CLASS CERTIFICATION** on the following recipients via the method indicated:

Arthur W. Harrigan, Jr., WSBA #1751  
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*Attorneys for Adaptive Marketing LLC*

DATED this 2nd day of June, 2011.

s/Karin B. Swope  
Karin B. Swope